IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.26 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
R B MASTURLAL AND SONS P LTD - Respondent(s)

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Appearance :
MS MM BHATT for Applicant No(s).: 1.
NOTICE SERVED for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 12/08/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'B' has referred the following question under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax:

> "Whether, the Appellate Tribunal is right in law and on facts in directing the ITO to allow carry forward of loss determined on the basis of belated return of income?"

2. The Assessment Year is 1985-86 and the relevant accounting period is calender year 1984. The assessee filed return of income showing loss of Rs.1,19,280/- on 27th September, 1985. The assessment was finalized by the Assessing Officer on 28th December, 1987, computing the total loss at Rs.93,587/-. However, he did not permit the loss determined to be carried forward by observing as under:

> "..... Since the return is late the loss determined is not allowed to be carried forward."

3. The assessee carried the matter in appeal before the CIT (Appeals) who, vide his order dated 30th November, 1988, directed the Assessing Officer to allow carry forward of loss. It is found by the Commissioner (Appeals) that the return which was due on 30th June, 1985 had been filed on 27th September, 1985. That the assessee had filed an extension application in Form No.6 on 27th June, 1985 seeking

extension upto 30th September, 1985. In light of the ratio laid down by this Court in the case of *Commissioner of Income-tax, Gujarat-IV Vs. Gordhanbhai Jethabhai*, [1983] 142 ITR 84 (Guj.), the Commissioner (Appeals) held that the assessee was entitled to carry forward the loss as there was no reply from the Assessing Officer as regards the extension application filed in Form No.6.

4. The Revenue carried the matter in appeal before the Tribunal. Vide order dated 4th June, 1992 the departmental appeal was dismissed by the Tribunal upholding the view adopted by the CIT (Appeals).

5. Heard Ms.M.M.Bhatt, learned Standing Counsel appearing on behalf of the applicant – Revenue. Though served there is no appearance on behalf of the respondent – assessee.

6. Ms.M.M.Bhatt has invited attention to decision of this Court rendered in Income Tax Reference No.107 of 1993 dated 15th March, 2003 in the case of *Mehsana Ice & Cold Storage Pvt. Ltd. Vs. Commissioner of Income-tax*. It was submitted by her that the issue in question stands concluded by the aforesaid

decision.

7. In light of the aforesaid fact situation and the ratio laid down in decisions of this Court in case of Gordhanbhai Jethabhai and Mehsana Ice & Cold Storage Pvt. Ltd. (supra), the question referred is answered in the affirmative i.e. in favour of the assessee and against the Revenue. The Tribunal was justified in law in directing the Assessing Officer to allow carry forward of the loss determined.

8. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**